# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 118.

C. W. CORNELL AND F. B. CORNELL, COPARTNERS DOING BUSINESS UNDER THE NAME AND STYLE OF CORNELL BROTHERS, PLAINTIFFS IN ERROR,

*vs.*

F. E. COYNE, LATE UNITED STATES COLLECTOR OF INTERNAL REVENUE, FIRST DISTRICT OF ILLINOIS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED AUGUST 18, 1902.

(18,649.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 8, 1903.

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*a* Circuit Court of the United States, Northern District of Illinois, Northern Division.

C. W. CORNELL and F. B. CORNELL, Co-partners Doing Business under the Name and Style of Cornell Brothers,
*vs.*
F. E. COYNE, Late Collector of Internal Revenue, First District of Illinois.
} 26300. Assumpsit.

Mr. Lewis F. Mason, Mr. William E. Mason, Mr. C. W. Greenfield, attorneys for C. W. Cornell and F. B. Cornell, co-partners, etc.
Mr. S. H. Bethea, United States district attorney for the northern district of Illinois, Mr. Oliver E. Pagin, attorneys for F. E. Coyne, late collector of internal revenue for first district of Illinois.

1 *Præcipe for Record.*

Circuit Court of the United States, Northern District of Illinois, Northern Division.

C. W. CORNELL and F. B. CORNELL, Co-partners, etc.,
*vs.*
F. E. COYNE, Late Collector of Internal Revenue, First District of Illinois.
} 26300.

To the clerk of the above entitled court:

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the Supreme Court of the United States, under the writ of error heretofore allowed by said court and include in the said transcript the following pleadings, proceedings and papers on file, to-wit:

Præcipe for summons,
Summons and return,
Declaration,
Demurrer,
Judgment of July 1, 1902,
Bill of exceptions,
Petition for writ of error,
Assignment of error,
Order of August 12, 1902, allowing writ of error,
Bond on writ of error,
Clerk's certificate,
Original writ of error,
Original citation.

Said transcript to be prepared as required by law and the rules of this court and the rules of the United States Supreme Court and on file in the office of the clerk of the Supreme Court at Washington, before the 11th day of September, 1902.

MASON & MASON,
C. W. GREENFIELD,
*Attorneys for Appellants.*

(Endorsed:) Filed Aug. 15 1902 Marshall E. Sampsell clerk

2 Pleas in the circuit court of the United States for the northern district of Illinois—northern division, begun and held at the United States court room, in the city of Chicago, in said district and division, before the Hon. Christian C. Kohlsaat, district judge of the United States for the northern district of Illinois, on Tuesday, the first day of July, in the year of our Lord one thousand nine hundred and two, being one of the days of the regular December term of said court, 1901, and of our Independence the one hundred and twenty-sixth year.

MARSHALL E. SAMPSELL, *Clerk.*

3 C. W. CORNELL and F. B. CORNELL, Co-partners Doing Business under the Firm Name and Style of Cornell Brothers,
*vs.*
F. E. COYNE, Late United States Collector of Internal Revenue, First District of Illinois. } 26300.

NORTHERN DISTRICT OF ILLINOIS, *Northern Division.*

Be it remembered that on this day to-wit: the seventeenth day of May, 1902, came the plaintiffs, C. W. Cornwell and F. B. Cornell, co-partners doing business as Cornell Bros., by their attorneys, Mason and Mason and C. W. Greenfield, and filed in the clerk's office of said court their præcipe for summons in words and figures following to-wit:

4 *Præcipe for Summons.*

UNITED STATES OF AMERICA,
*Northern District of Illinois, Northern Division,* } ss:

Circuit Court, June Term, A. D. 1902.

C. W. CORNELL and F. B. CORNELL, Co-partners Doing Business as Cornell Bros.,
*vs.*
F. E. COYNE, Late United States Collector of Internal Revenue, First District of Illinois. } In —. Damages, $20,000.

The clerk of said court will issue a summons in said cause to said defendants, in a plea of trespass on the case on promises to the damage of said plaintiffs in the sum of twenty thousand dollars, direct the same to the United States marshal for said district to execute, and make it returnable to the June term of said court, 1902.

Dated this 17th day of May, A. D. 1902.

MASON & MASON.
C. W. GREENFIELD.

To S. W. Burnham, Esq., clerk.

(Endorsed:) Filed May 17, 1902, Marshall E. Sampsell, clerk.

And on the same day to-wit: the 17th day of May, 1902, a writ of summons issued out of the clerk's office of said court, directed to the marshal of said district to execute, which summons together with the marshal's return thereon endorsed is in the words and figures following to-wit:

5 CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
*Northern District of Illinois, Northern Division,* } ss:

The United States of America to the marshal of the northern district of Illinois, Greeting:

We command you to summon F. E. Coyne, late United States collector of internal revenue, first district of Illinois, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof to be holden at Chicago, in the district aforesaid, on the first Monday of July next to answer unto C. W. Cornell and F. B. Cornell, co-partners doing business as Cornell Bros., of a plea of trespass on the case upon promises, to their damage, as is alleged, of twenty thousand dollars, *dollars*, and have you then and there this writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of the [SEAL.] United States of America, at Chicago, aforesaid, this 17th day of May in the year of our Lord one thousand nine hundred and two.

MARSHALL E. SAMPSELL, *Clerk.*

6 *Marshal's Return.*

I have served this writ within my district as follows to wit:
By reading the same to and within the presence and hearing of F. E. Coyne, late United States collector of internal revenue first district of Illinois, on May 22nd, 1902.

JOHN C. AMES, *U. S. Marshal,*
By THOMAS H. CURRIER, *Deputy.*

(Endorsed:) Filed May 22, 1902, Marshall E. Sampsell, clerk.

And on to-wit: the 17th day of May, 1902, came the plaintiffs in said entitled cause by their attorney and filed in the clerk's office of said court their declaration in words and figures following to-wit:

7 *Declaration.*

UNITED STATES OF AMERICA,
*Northern District of Illinois, Northern Division.*

In the Circuit Court of said District, June Term, A. D. 1902.

C. W. Cornell and F. B. Cornell, co-partners, doing business under the firm name and style of Cornell Brothers, of the city of Elgin, Kane county, in said district, by Mason & Mason and C. W. Greenfield, their attorneys, complain of F. E. Coyne, late United States collector of internal revenue first district of Illinois, of a plea of trespass on the case on promises.

For that whereas, on, towit: the 1st, day of August, A. D. 1897, in the town of Huntley, county of McHenry, towit: in said district, the plaintiffs were engaged in the business of manufacturing and selling a product known in commercial circles in foreign countries and in the internal revenue department of the United States, as filled cheese, and they have been engaged in such business at certain periods of each year from thence hitherto. And the plaintiffs aver that at various times subsequent to the said 1st, day of August, A. D. 1897, and prior to the 1st, day of April, A. D. 1901, the plaintiffs entered into various contracts in London and Liverpool, England, under and by the terms of which they agreed to manufacture at their said factory in the district aforesaid, certain large quantities of filled cheese, and export and deliver the same in Liverpool and London in the Kingdom of Great Britain, in certain fixed quantities and at certain

intervals and periods of time covered by and mentioned in said contracts; that no filled cheese was at any time after the said 1st day
8 of August, A. D. 1897, and prior to said 1st, day of April, A. D. 1901, manufactured by the plaintiffs in said district, or elsewhere, except under contracts made and entered into by the plaintiffs as aforesaid; and that under and in pursuance of said contracts plaintiffs did from time to time subsequent to the 1st, day of August, A. D. 1897, and prior to said 1st, day of April, A. D. 1901, manufacture large quantities of filled cheese, towit: 1,580,479 pounds thereof, all of which was shipped directly from plaintiffs' factory, in the district aforesaid, and exported by them to London and Liverpool, and the same was sold in and consigned direct to markets and countries wholly without the United States.

Plaintiffs further aver that during the entire period aforesaid, and for each year thereof, the plaintiffs complied with the internal revenue laws of the United States with reference to the payment of an annual manufacturers' tax, and the same was duly and promptly paid by the plaintiffs to the said internal revenue collector in and for the first district of the State of Illinois, at the time fixed by law for the payment of same. That under and by virtue of section 9, article 1, of the Constitution of the United States, the plaintiffs did not at any time during the said period, become liable to the United States Government, or to the said defendant as collector, to procure and attach any revenue stamps to said filled cheese or to the packages containing the said filled cheese so manufactured and exported by them under said contracts; nor did they at any time become liable to the said United States Government for any tax or duty thereon. That each quantity or installment of filled cheese manufactured, exported and delivered by the plaintiffs under said contracts, was forwarded by the plaintiffs as soon as the same was ready for shipment from their factory in said district, and prior to
9 the shipment thereof the plaintiffs applied to the defendant as such collector, for permission to ship and forward the same without purchasing and attaching to said filled cheese or to the said packages containing the said filled cheese, the revenue stamps required by an alleged act of Congress, approved June 6th, A. D. 1896, with reference to internal revenues; but notwithstanding the fact that such filled cheese was manufactured for export, and was about to be delivered by the plaintiffs for export and shipment to a foreign market, and notwithstanding the provisions of said section 9, article 1, of the Constitution of the United States, the defendant, assuming to act as such collector of the said internal revenue district, and assuming and pretending to act under and by virtue of said alleged act of Congress, approved June 6th, A. D. 1896, did, at various times during said period, and on the dates of shipment of said filled cheese, by force and duress, exact, demand and collect from the plaintiffs large sums of money amounting in the aggregate to, towit: $20,000, and upon the claim and under the pretext that the same was a general assessment as an internal revenue tax upon the said commodities. That the plaintiffs objected and protested against the said re-

quirement of said defendant, and contended that under the provisions of the Constitution aforesaid, plaintiffs were not required to place such revenue stamps upon the said commodity when manufactured for export and exported and sold in a foreign market; but notwithstanding said protests repeated threats were made by the defendant to arrest and prosecute the plaintiffs for a supposed violation of the said alleged act of Congress last mentioned, unless the plaintiffs would immediately procure and purchase revenue stamps as required
10 by said act and attach the same to the said packages before delivering the same to be forwarded in the manner aforesaid; and governed wholly by said threats of arrest and prosecution, and not otherwise, said plaintiffs did make a written requisition upon the defendant as said internal revenue collector, for internal revenue stamps to be attached by them to the packages of filled cheese included in each of the said shipments, which said revenue stamps amounted in the aggregate to a large sum of money, towit: the sum of $20,000, which said requisitions, and each of them, stated upon the face thereof in writing that the same was made by the plaintiffs under protest; and plaintiffs aver that revenue stamps were furnished to the plaintiffs by the said defendant as such collector under such requisitions, amounting to the sum aforesaid, which were paid for by the plaintiffs to said defendant upon delivery. That the said requisitions, and each of them, were made by the plaintiffs wholly by reason of the demands of the defendant, and by reason of the threats aforesaid, and not otherwise.

Plaintiffs aver that the requirements of the said defendant, whereby the plaintiffs were compelled in the manner aforesaid, to purchase and use the said revenue stamps, were wholly unauthorized and unwarranted by law; and that section 9, of the act of Congress aforesaid, and said act itself in that the same failed to contain provisions whereby filled cheese manufactured for export trade and exported and sold in foreign markets wholly without the United States, might be exported and sold free from the levy of any duty or tax thereon; or provision whereby the same might be freed from the force and effect of said act, are repugnant to said section
11 9, article 1, of the Constitution of the United States, and that this suit therefore, involves the construction or application of the Constitution of the United States.

And the plaintiffs aver that afterwards on, towit: the 8th, day of May, A. D. 1901, in pursuance of the requirements of section 3226, of the Revised Statute- of the United States, plaintiffs made an appeal in writing to the Commissioner of Internal Revenues, according to the provisions of the law in that regard, and the regulations of the Secretary of the Treasury, established in pursuance thereof, demanding and requiring a refund or repayment to the plaintiffs of the said sum of money, which the plaintiffs had been unlawfully compelled to pay to the said internal revenue collector in the manner aforesaid. And afterwards such proceedings were had thereon, that the said Commissioner on, towit: the 6th, day of January, A. D.

1902, rendered a decision therein whereby the said claim was rejected.

By reason of which premises the defendant on, towit: the 6th, day of January, A. D. 1902, at Chicago, Illinois, towit: the district aforesaid, became and was liable to pay to the plaintiffs the said several sums of money on request, and being so liable then and there undertook and faithfully promised the plaintiffs well and truly to pay unto the plaintiffs the said several sums of money respectively on request; nevertheless the said defendant, although often requested so to do, has not as yet paid the several sums of money above mentioned, or any or either of them, or any part thereof to the plaintiffs, but to pay the same, or any part thereof, the defendant has hitherto altogether refused, and still does refuse to do to the damage of the plaintiffs in the sum of, towit: $20,000.

12 And for that whereas also, the defendant on, towit: the 6th, day of January, A. D. 1902, in the county of McHenry, towit: in the said district, was indebted to the plaintiffs in the sum of $20,000 for the payment by the defendant to the plaintiffs of the value of internal revenue stamps issued by the United States under the authority of law for the payment of internal revenue tax, and which the plaintiffs had been wrongfully, improperly and unnecessarily required by the defendant to purchase, use and cancel upon a certain commodity known as filled cheese, and manufactured by the plaintiffs for export trade, and which had theretofore been sold by them in foreign markets wholly without the United States, and which was ready to be delivered by the plaintiffs to be forwarded to be delivered in such foreign markets, at the time when the said internal revenue thereon had been wrongfully collected by the defendant; and being so indebted the defendant, in consideration thereof, then and there promised the plaintiffs to pay them the said sum of money on request.

And the plaintiffs aver that heretofore on, towit: the 8th, day of May, A. D. 1901, in pursuance of the requirements of section 3226, of the Revised Statutes of the United States, the plaintiffs made an appeal in writing to the Commissioner of Internal Revenues, according to the provisions of the law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, demanding and requiring a refund and repayment of the said sum of money, which the plaintiffs had been unlawfully compelled to so pay to the defendant in the manner aforesaid. And afterwards such proceedings were had thereon that the said Commissioner

13 on, towit: the 6th, day of January, A. D. 1902, rendered a decision therein whereby the said claim was rejected.

Yet the defendant, though requested, has not paid said sum of money, or any part thereof, to the plaintiffs, but refuses so to do; to the damage of the plaintiffs in a large sum of money, towit: the sum of $20,000.

And whereas also, the said defendant afterwards on, towit: the day and year last aforesaid, and at the place last aforesaid, accounted together with the said plaintiffs of and concerning divers other sums

of money, before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrears and unpaid, and upon such accounting the said defendant then and there was found to be in arrears and indebted to the said plaintiffs in the further sum of $20,000 of like lawful money as aforesaid. And being so found in arrears and indebted to the said plaintiffs, the said defendant in consideration thereof afterwards, towit: on the day and year last aforesaid, and at the place last aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested etc.) has not paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof to the said plaintiffs the said defendant has hitherto altogether refused, and still does refuse, to the damage of said plaintiffs of twenty thousand dollars ($20,000),
14 and therefore the said plaintiffs bring suit etc.

MASON & MASON,
C. W. GREENFIELD,
*Plaintiffs' Attorneys.*

15 UNITED STATES OF AMERICA,
*Northern District of Illinois, Northern Division.*

In the Circuit Court of said District, June Term, A. D. 1902.

C. W. CORNELL ET AL.
*vs.*
F. E. COYNE, Late Collector, etc.

*Bill of Particulars.*

A detailed statement of the quantity of filled cheese manufactured by the plaintiffs under contracts previously made in London and Liverpool, England, for the manufacture thereof, to be forwarded and delivered at said London and Liverpool, at times and in quantities stated in said contracts, and which was shipped direct from plaintiffs' factory, where the same was made, to London and Liverpool, England, giving date of each shipment, number of packages, number of pounds contained in each shipment, and names of consignees and places where consigned and sold, and upon which plaintiffs were unlawfully required by the defendant to place internal revenue stamps in accordance with the provisions of the act of Congress, approved June 6th, A. D. 1896, with reference to internal revenues.

15½

| Date shipped. | Packages. | Pounds. | Where and to whom sold. | |
|---|---|---|---|---|
| | | | Name. | Place of business. |
| 1897. | | | | |
| Sept. 7 | 50 | 3579 | Cornell Bros | Liverpool. |
| 10 | 300 | 21838 | " | London. |
| 23 | 364 | 26436 | " | " |
| 30 | 300 | 21731 | " | " |
| Oct. 8 | 350 | 22514 | " | " |
| 20 | 300 | 21252 | " | " |
| Nov. 11 | 350 | 24882 | " | " |
| Dec. 2 | 350 | 24389 | " | " |
| 15 | 350 | 24949 | " | " |
| 29 | 350 | 25215 | " | " |
| 1898. | | | | |
| Jan. 12 | 400 | 28571 | " | " |
| 26 | 400 | 28388 | " | " |
| Feb. 9 | 400 | 28639 | " | " |
| 16 | 343 | 24527 | " | " |
| M'ch 9 | 400 | 28345 | " | " |
| 23 | 400 | 28081 | " | " |
| Apr. 6 | 400 | 28053 | " | " |
| 20 | 486 | 34784 | " | " |
| Dec. 28 | 400 | 28637 | " | " |

| Date shipped. | Packages. | Pounds. | Where and to whom sold. | |
|---|---|---|---|---|
| | | | Name. | Place of business. |
| 1899. | | | | |
| Jan. 11 | 400 | 28778 | Cornell Bros. | London. |
| 25 | 300 | 21295 | " | " |
| Feb. 1 | 300 | 21439 | " | " |
| 15 | 300 | 21766 | " | " |
| M'ch 1 | 419 | 30556 | " | " |
| 15 | 300 | 21741 | " | " |
| 29 | 350 | 25922 | " | " |
| Apr. 12 | 300 | 22416 | " | " |
| 26 | 300 | 22286 | " | " |
| May 10 *10* | 200 | 14505 | " | " |
| 24 | 150 | 10645 | " | " |
| June 8 | 313 | 22275 | " | " |
| Dec. 20 | 350 | 21656 | " | " |
| 28 | 300 | 19316 | W. D. Grant. | Liverpool. |
| 1900. | | | | |
| Jan. 10 | 317 | 22477 | " | " |
| 19 | 275 | 19716 | " | " |
| Feb. 2 | 250 | 18170 | " | " |
| 9 | 262 | 18913 | " | " |
| 23 | 333 | 24165 | " | " |
| M'ch 7 | 372 | 27100 | " | " |
| 21 | 300 | 21773 | " | " |
| 28 | 200 | 14426 | " | " |
| Ap'l 4 | 200 | 14347 | " | " |
| 11 | 234 | 16416 | " | " |
| 18 | 211 | 13646 | Cornell Bros. | London. |
| 25 | 225 | 14650 | " | " |
| May 2 | 191 | 12563 | " | " |
| 10 | 279 | 18017 | " | " |
| Sept. 27 | 300 | 20913 | " | Liverpool. |
| Oct. 11 | 400 | 28266 | " | " |
| 25 | 500 | 35129 | " | " |
| Nov. 8 | 500 | 35519 | " | " |
| 22 | 500 | 34573 | " | " |
| Dec. 6 | 500 | 35039 | " | " |
| 20 | 500 | 36485 | " | " |
| 16 | | | | |
| 1901. | | | | |
| Jan. 3 | 600 | 44268 | " | " |
| 17 | 600 | 44079 | " | " |
| 31 | 600 | 43550 | " | " |
| Feb. 14 | 600 | 42850 | " | " |
| 21 | 500 | 35294 | " | London. |
| 28 | 500 | 35007 | " | Liverpool. |
| M'ch 13 | 500 | 34582 | " | London. |
| 21 | 600 | 39140 | " | Liverpool. |

17 The following is a list of the requisitions respectively, for revenue stamps to be attached to the packages respectively, contained in the foregoing schedule, giving dates of each requisition, number of packages and value of stamps covered by each requisition.

| Date of requisition. | Number of packages. | Value of stamps purchased. |
|---|---|---|
| 1897. | | |
| Sept. 7 | 50 | 35.79 |
| 10 | 300 | 218.38 |
| 22 | 364 | 264.36 |
| 29 | 300 | 217.31 |
| Oct. 7 | 350 | 225.14 |
| 20 | 300 | 212.52 |
| Nov. 10 | 350 | 248.82 |
| Dec. 1 | 350 | 243.89 |
| 14 | 350 | 249.49 |
| 28 | 350 | 252.15 |
| 1898. | | |
| Jan. 11 | 400 | 285.71 |
| 25 | 400 | 283.88 |
| Feb. 8 | 400 | 286.39 |
| 14 | 343 | 245.27 |
| M'ch 8 | 400 | 283.45 |
| 22 | 400 | 280.81 |
| Apr. 5 | 400 | 280.53 |
| 19 | 486 | 347.94 |
| Dec. 27 | 400 | 286.37 |
| 1899. | | |
| Jan. 10 | 400 | 287.78 |
| 24 | 300 | 212.95 |
| 31 | 300 | 214.39 |
| Feb. 14 | 300 | 217.66 |
| 28 | 419 | 305.56 |
| M'ch 14 | 300 | 217.41 |
| 28 | 350 | 259.22 |
| Ap'l 11 | 300 | 224.16 |
| 25 | 300 | 222.86 |
| May 9 | 200 | 145.05 |
| 23 | 150 | 106.45 |
| June 6 | 313 | 222.75 |
| Dec. 12 | 350 | 216.56 |
| 27 | 300 | 193.16 |

| Date of requisition. | Number of packages. | Value of stamps purchased. |
|---|---|---|
| 1900. | | |
| Jan. 9 | 317 | 224.77 |
| | | 801883 |
| | | 85778 |
| 18 Jan. 16 | | 1111 |
| 31 | 275 | 197.16 |
| Feb. 7 | 250 | 181.70 |
| 20 | 262 | 189.13 |
| M'ch 6 | 333 | 241.65 |
| 20 | 372 | 271.00 |
| 27 | 300 | 217.73 |
| Ap'l 3 | 200 | 144.26 |
| 10 | 200 | 143.47 |
| 17 | 234 | 164.16 |
| 24 | 211 | 136.46 |
| May 1 | 225 | 146.50 |
| 9 | 191 | 125.63 |
| Sept. 26 | 279 | 180.17 |
| Oct. 9 | 300 | 209.13 |
| 23 | 400 | 282.66 |
| Nov. 7 | 500 | 351.29 |
| 20 | 500 | 355.19 |
| Dec. 4 | 500 | 345.73 |
| 18 | 500 | 350.39 |
| 1901. | 500 | 364.85 |
| Jan. 2 | 600 | 442.68 |
| 15 | 600 | 440.79 |
| 29 | 600 | 435.50 |
| Feb. 12 | 600 | 428.50 |
| 19 | 500 | 352.94 |
| 26 | 500 | 350.07 |
| M'ch 12 | 500 | 345.82 |
| 19 | 600 | 381.40 |
| | | 7786.96 |
| | | 4132 |
| | | 1111 |

80.1883
7786.90

15805.73

(Endorsed:) Filed May 17, 1902. Marshall E. Sampsell, clerk.

19 And on to-wit: the 27th day of June, 1902, came the defendant in said entitled cause by S. H. Bethea, United States attorney for the northern district of Illinois and filed in the clerk's office of said court his certain demurrer to the declaration in words and figures following to-wit:

*Demurrer.*

In the Circuit Court of the United States of America for the Northern District of Illinois, Northern Division, of the May Adjourned Term, in the Year Nineteen Hundred and Two.

C. W. CORNELL and F. B. CORNELL, Co-partners,
*vs.*
F. E. COYNE, Late Coll'r Int. Rev., 1st Dist. Ill. } No. 26300. Assumpsit.

And the defendant, by S. H. Bethea, United States attorney for the northern district of Illinois, his attorney comes and defends etc., when, etc., and says that the said declaration, and each count thereof, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiffs to ma-ntain their aforesaid action, and that he, the defendant, is not bound by law to answer the same; and this he is ready to verify; wherefore, for want of a sufficient declaration in this behalf, the defendant prays judgment, and that the plaintiffs may be barred from maintaining their aforesaid action, etc.

S. H. BETHEA,
*United States Attorney, Attorney for Defendant.*

(Endorsed:) Filed June 27, 1902, Marshall E. Sampsell, clerk.

20 And on to-wit: the first day of July, 1902, in the December term of said court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to-wit:

*Judgment of July 1, 1902.*

C. W. CORNELL, ETC.,
*vs.*
F. E. COYNE, Late United States Collector. } 26300. Assumpsit.

Now come the parties by their attorneys, and the demurrer to the declaration is heard and sustained, the plaintiffs electing to stand

by their pleadings. And thereupon, it is ordered, that the defendant have judgment upon his said demurrer, and that said cause be dismissed at the costs of the plaintiffs, and that execution issue therefor, the plaintiffs excepting to the ruling of the court and to the entry of this order enter their motion for a writ of error to the Supreme Court of the United States, which is allowed upon the plaintiffs giving bond in the penalty of three hundred dollars, and twenty days are allowed in which to present their bill of exceptions.

21 On the hearing of this cause the following exceptions were taken and were allowed by the court and made of record, which said exceptions are in the words and figures following to-wit:

*Bill of Exceptions.*

UNITED STATES OF AMERICA,
*Northern District of Illinois, Northern Division.*

C. W. CORNELL & F. B. CORNELL, Co-partners Doing Business under the Firm Name and Style of Cornell Brothers,
*vs.*
F. E. COYNE, Late Collector of Internal Revenue, First District of Illinois.

Bill of exceptions.

Be it remembered that upon the hearing of the above entitled cause before the Honorable Christian C. Kohlsaat, in the May term, A. D. 1902, of said court on the 1st day of July, A. D. 1902, the following proceedings were had:

*Appearances.*

For plaintiffs—Messrs. Mason & Mason and C. W. Greenfield,
For defendant—Messrs. S. H. Bethea and O. E. Pagin.

The said cause having come on to be heard before the court upon the declaration therein and the demurrer of the defendant thereto, the defendant, by his counsel, moved the court to sustain the said demurrer to the said declaration, and the said motion of the defendant was thereupon allowed by the court and said demurrer to said declaration sustained; to which ruling of the court in granting defendant's said motion and in sustaining the demurrer
22 to the said declaration plaintiffs, by their counsel, then and there duly excepted.

And thereupon plaintiffs, by their counsel, elected to stand by their said declaration, whereupon defendant, by his counsel, moved the court to enter judgment in said cause against the plaintiffs and in favor of the defendant for costs of said suit, and said motion was

allowed and judgment was then entered by the court against the plaintiffs and in favor of the defendant for costs of said suit; to which ruling of the court in granting said motion of the defendant and in entering judgment against the plaintiffs and in favor of the defendant for costs of said suit, the plaintiffs, by their counsel, then and there duly excepted.

And for as much as the foregoing proceedings, matters and things do not otherwise fully appear of record in said cause the plaintiffs present this their bill of exceptions and pray that the same may be signed and sealed by the court and made a part of the record of said cause, which is done accordingly this 2nd day of July, A. D. 1902.

KOHLSAAT, *Judge.* [SEAL.]

O. K.
O. E. P.

(Endorsed:) Filed July 1, 1902, Marshall E. Sampsell, clerk.

23 And on to-wit: the 12th day of August, 1902, came the plaintiffs in said entitled cause by their attorney and filed in the clerk's office of said court their certain petition for writ of error in words and figures following to-wit:

*Petition for Writ of Error.*

UNITED STATES OF AMERICA,
*Northern District of Illinois, Northern Division.*

In the Circuit Court of the United States for the Northern District of Illinois.

C. W. CORNELL and F. B. CORNELL, Co-partners, etc.,
vs.
F. E. COYNE, Late United States Collector of Internal Revenue, First District of Illinois.
} Gen. No. 26300.

To the honorable the judge of said court:

C. W. Cornell and F. B. Cornell, co-partners, doing business under the firm name and style of Cornell Brothers, the plaintiffs in the above entitled cause, respectfully show that they are aggrieved by the rulings and orders entered and judgment rendered in the above entitled cause on the first day of July, A. D. 1902, and that there is manifest error in the record and judgment of said court, entered in said cause, apparent upon the record of said cause.

Wherefore, they pray that an order may be entered allowing the said plaintiffs to prosecute a writ of error to the honorable, the Supreme Court of the United States, under and according to the laws

of the United States in that behalf made and provided, that
24 an order may be entered fixing the amount of security which said plaintiffs shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court may be suspended, superseded and stayed until the determination of said writ of error by the United States Supreme Court; and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said Supreme Court.

And your petitioners will ever pray.

MASON & MASON,
C. W. GREENFIELD,
*Attorneys for Plaintiff.*

Petition granted & writ of error allowed Aug. 12, 1902

JAS. G. JENKINS,
*U. S. Circuit Judge.*

(Endorsed:) Filed August 12, 1902, Marshall E. Sampsell, clerk.

25 And on to-wit: the 12th day of August, 1902, came the plaintiffs in said entitled cause by their attorney and filed in the clerk's office of said court their certain assignment of errors in words and figures following to-wit:

*Assignment of Errors.*

UNITED STATES OF AMERICA,
*Northern District of Illinois, Northern Division.*

In the Circuit Court of the United States for the Northern District of Illinois.

C. W. CORNELL & F. B. CORNELL, Co-partners Doing Business under the Firm Name and Style of Cornell Brothers,
*vs.*
F. E. COYNE, Late United States Collector of Internal Revenue, First District of Illinois.
} Gen. No. 26300.

Assignment of errors.

Come now the plaintiffs in the above entitled cause in the July term of this honorable court, and say:

That in the record of this cause and in the rulings of the Honorable Christian C. Kohlsaat, judge of the circuit and district courts of the United States in and for the northern district of the State of Illinois, and of the seventh judicial circuit of the United States, presiding at the hearing of said cause, and in the rulings of the said judge upon the demurrer to the declaration theretofore filed in said

cause, and the motion of the defendant to sustain said de-
26 murrer to said declaration, and the ruling and action of the said judge in entering judgment in said cause against the *the* plaintiffs and in favor of the defendant, the said plaintiffs, in connection with their petition for a writ of error, make the following assignment of errors upon which they will rely in their prosecution of the said writ of error in the above entitled cause.

I.

That the said court erred in sustaining the said demurrer of the defendant to the plaintiffs' declaration filed in said cause.

II.

That the said court erred in rendering judgment against said plaintiffs and in favor of the defendant in said cause.

III.

The said court so erred in sustaining the demurrer of the defendant to the plaintiffs' declaration, and in entering judgment in favor of the defendant and against the plaintiffs, for the following reasons, to wit:

(*a.*) The said court, in sustaining the said demurrer to the said declaration, and in entering judgment in the said cause in favor of the defendant and against the plaintiffs, in effect held that goods manufactured in the United States expressly for export to a foreign country, under a contract previously made in such foreign country for the manufacture and export thereof, are subject to the payment of an internal revenue tax thereon, notwithstanding the provisions of section 9, article 1, of the Constitution of the United States.

27 (*b.*) The said court in sustaining the said demurrer to the said declaration, and in entering judgment thereon against the plaintiffs and in favor of the defendant, in effect held that section 9, of the act of Congress, approved June 6th, A. D. 1896, with reference to internal revenues, and which is entitled "An act defining cheese, also imposing a tax upon and regulating the manufacture, sale importation and exportation of 'filled cheese,'" and the said act itself were not repugnant to section 9, article 1, of the Constitution of the United States in that the same failed to contain provisions whereby filled cheese manufactured for export trade and exported and sold in foreign markets wholly without the United States, might be exported and sold free from the levy and payment of any duty or tax thereon.

(*c.*) The said court, in sustaining the said demurrer to said declaration, and in entering judgment thereon against the plaintiffs and in favor of the defendant, in effect held that section 9, of the act of Congress, approved June 6th, A. D. 1896, with reference to internal revenues, and which is entitled "An act defining cheese, also imposing a tax upon and regulating the manufacture, sale, importation

and exportation of 'filled cheese,'" and the said act itself, were not repugnant to section 9, article 1, of the Constitution of the United States in that the same failed to contain provisions whereby filled cheese manufactured for export under a contract previously made in a foreign country for the manufacture thereof in the United States, and the export to and delivery thereof in a foreign country, might be so manufactured and exported and sold free from the levy and payment of any duty or tax thereon.

28 (*d.*) The said court, in sustaining the said demurrer to the said declaration, and in entering judgment in the said cause in favor of the defendant and against the plaintiffs, in effect held that goods manufactured in the United States and subsequently sold in a foreign country, and exported and delivered in such foreign country, were subject to the payment of an internal revenue tax thereon, notwithstanding the provisions of section 9, article 1, of the Constitution of the United States.

(*e.*) Because section 9, of the act of Congress, approved June 6th, A. D. 1896, with reference to internal revenues, and which is entitled "An act defining cheese, also imposing a tax upon and regulating the manufacture, sale, importation and exportation of 'filled cheese,'" and the said act itself are repugnant to section 9, article 1, of the Constitution of the United States in that the same failed to contain any provisions whereby filled cheese manufactured in the United States, and thereafter sold and exported to a foreign country, might be so exported and sold free from the levy of any duty or tax thereon by the United States.

(*f.*) Because section 9, of the act of Congress, arrpoved June 6th, A. D. 1896, with reference to internal revenues, and which is entitled "An act defining cheese, also imposing a tax upon and regulating the manufacture, sale, importation and exportation of 'filled cheese,'" and the said act itself are repugnant to section 9, article 1, of the Constitution of the United States, in that the same failed to contain provisions whereby filled cheese manufactured in the United States under contract previously made in a foreign country, might be so manufactured, exported and delivered free from the levy

29 of any duty or tax thereon by the United States.

Wherefore, for these and other manifest errors, apparent upon the face of the record in said cause, the plaintiffs, C. W. Cornell and F. B. Cornell, plaintiffs in error, herein pray that the judgment of the said court be reversed, and that such directions may be given that the demurrer of the said defendant to the said declaration, filed by the plaintiffs in said cause, be over-ruled and that the said defendant be ordered and directed to plead to the said declaration within a short day to be fixed by the court.

MASON & MASON,
C. W. GREENFIELD,
*Attorneys for Plaintiffs in Error.*

(Endorsed:) Filed August 12, 1902 Marshall E. Sampsell, clerk.

30 And on to-wit: the 12th day of August, being one of the days of the regular July term of said court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. James G. Jenkins, circuit judge, appears the following entry to-wit:

*Order of August* 12, 1902, *Allowing Writ of Error.*

| | | |
|---|---|---|
| C. W. CORNELL and F. B. CORNELL, Co-partners Doing Business under the Firm Name and Style of Cornell Brothers, *vs.* F. E. COYNE, Late Collector of Internal Revenue, First District of Illinois. | 26300. | Assumpsit. |

Now come the plaintiffs by their attorney and present their petition for writ of error, assignment of errors and bond on writ of error in the sum of three hundred dollars, which bond is approved and said writ of error allowed, to have reviewed in the Supreme Court of the United States, the judgment heretofore entered herein, and that the clerk issue said writ of error forthwith, and deposit a copy of the same for the defendant in error.

31 And on to wit: the 12th day of August, 1902, there was filed in the clerk's office of said court in said entitled cause a certain bond on writ of error in words and figures following, to-wit:

*Bond on Writ of Error.*

Know all men by these presents, that we Charles W. Cornell and Frank B. Cornell, of the city of Elgin, in the county of Kane, and State of Illinois, copartners, doing business under the firm name and style of Cornell Brothers, as principals, and Robert Ross, of Chicago, Illinois, as surety, are held and firmly bound unto F. E. Coyne, late United States collector of internal revenues first district of Illinois, in the full and just sum of three hundred ($300) dollars to be paid to the said F. E. Coyne his heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with out seals and dated this 31st day of July, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a term of the circuit court of the United States, in and for the northern district of Illinois, in a suit pending in said court between the said Charles W. Cornell and Frank B. Cornell, of the city of Elgin, in the county of Kane, and State of Illinois, copartners, doing business under the firm name and style of Cornell Brothers, and said F. E. Coyne, late United States collector of internal revenues first district of Illinois, a judgment was rendered in favor of

said F. E. Coyne, late collector, etc., and against the said Charles W. Cornell and Frank B. Cornell for costs of such suit; and the said Charles W. Cornell and Frank B. Cornell having obtained a writ of error and filed a copy thereof in the clerk's office of said court, to reverse the judgment in the aforesaid suit, and a citation directed to said F. E. Coyne, late United States collector of internal revenues first district of Illinois, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date thereon:

32 Now the condition of the above obligation is such that if the said Charles W. Cornell and Frank B. Cornell shall prosecute their writ of error to effect and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES W. CORNELL. [SEAL.]
FRANK B. CORNELL. [SEAL.]
ROBERT ROSS. [SEAL.]

Sealed and delivered in the presence of:

HORACE W. HENSHAW.
PARK FULLER.

Approved August 12th, 1902.

JAS. G. JENKINS,
*U. S. Circuit Judge.*

O. K.
O. E. PAGIN,
*Ass't U. S. Att'y.*

NORTHERN DISTRICT OF ILLINOIS,
*United States of America, Chicago, Illinois, Cook County.*

I, Robert Ross, being duly sworn on oath, depose and say that I am a resident of the city of Chicago, county of Cook, within the northern district of Illinois, and I own in fee simple in my own name and right clear and unincumbered real estate situated within the northern district of Illinois to the value of three hundred ($300.) dollars and over. That I am worth over and above my liabilities the sum of $5000.00.

ROBERT ROSS.

Subscribed and sworn to before me this 31st day of July, 1902.

[SEAL.] WALLACE E. SHIRRA,
*Notary Public.*

(Endorsed:) Filed Aug. 12, 1902, Marshall E. Sampsell, clerk.

33 NORTHERN DISTRICT OF ILLINOIS, } ss:
*Northern Division,* }

I, Marshall E. Sampsell, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of all the proceedings had of record in said court and made in accordance with præcipe filed in the cause entitled C. W. Cornell and F. B. Cornell, co-partners, doing business under the firm name and style of Cornell Brothers, plaintiffs *vs.* F. E. Coyne, late collector of internal revenue, first district of Illinois, defendant, as the same appear from the original records and files of said court now remaining in my custody and control.

Seal of Circuit Court U.S., Northern Dist. Illinois, 1855.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Chicago, in said district this 15th day of August, 1902.

MARSHALL E. SAMPSELL, *Clerk.*

34 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between C. W. Cornell and F. B. Cornell, co-partners, doing business under the firm name and style of Cornell Brothers, plaintiffs and F. E. Coyne, late collector of internal revenue first district of Illinois, defendant, a manifest error hath happened, to the great damage of the said C. W. Cornell and F. B. Cornell, co-partners doing business under the name and style of Cornell Brothers, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Seal of Circuit Court U.S., Northern Dist. Illinois, 1855.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twelfth day of August, in the year of our Lord one thousand nine hundred and two.

MARSHALL E. SAMPSELL,
*Clerk of the Circuit Court of the United States for the Northern Dist. of Illinois.*

Allowed by
JENKINS,
*Circuit Judge.*

35 [Endorsed:] 26300 Supreme Court of the United States. C. W. Cornell and F. B. Cornell copartners etc. *vs.* F. E. Coyne late collector 1st district of Illinois Writ of error. Filed Aug. 12, 1902 Marshall E. Sampsell, clerk Copy deposited for the defendant in error in the clerk's office, U. S. circuit court, northern district of Illinois.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Seal of Circuit Court U.S., Northern Dist. Illinois, 1855.

In obedience to the within writ, I herewith transmit to the Supreme Court of the United States a true and complete transcript of the record and proceedings in the foregoing entitled cause this 15th day of August, 1902.

MARSHALL E. SAMPSELL,
*Clerk United States Circuit Court, Northern District of Illinois.*

36 UNITED STATES OF AMERICA, *ss:*

To F. E. Coyne, late United States collector of internal revenue, first district of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, northern division, wherein C. W. Cornell and F. B. Cornell, copartners, doing business under the firm name and style of Cornell Brothers, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James G. Jenkins, judge of the circuit court of the United States this 12th day of August, in the year of our Lord one thousand nine hundred and two.

JAS. G. JENKINS, *Judge.*

37 [Endorsed:] No. 26300 Supreme Court of the United States Cornell *et al. vs.* Coyne late col'r Citation to the Supreme Court of the United States Filed Aug. 12 1902 Marshall E. Sampsell, clerk.

I hereby acknowledge service of this writ for the said F. E. Coyne this 12th day of August A. D. 1902.

OLIVER E. PAGIN,
*Assistant U. S. Attorney.*

Endorsed on cover: File No. 18649. N. Illinois C. C. U. S. Term No. 118. C. W. Cornell and F. B. Cornell, copartners doing business under the name and style of Cornell Brothers, plaintiffs in error, *vs.* F. E. Coyne, late United States collector of internal revenue, first district of Illinois. Filed August 18th, 1902.